

A special meeting of the Town Assembly of the Village of Arden was held on October 20, 1986, Chairman William Press presiding.

In attendance were:

Clara Dossett	Art Hurwitz	Miriam Donovan
Michael K. Curtis	Gail Rinehart	Robert Wynn (NV)
Leon Tanzer	Don Holcomb	Lee Starr
John Dossett	Hugh Roberts	P.O. Connor
Virginia Mann	Loretta Gallagher	Don Berman
Mamie Woolery	John Hewlett	Allen Riblett
Drew Burslem	Marianne Cinaglia	Cy Liberman
June Kleban	Romeo Hubner	Barbara Fenske
Bernard Kleban	William Theis	Aaron Hamburger
Alexander Sykulski	Tony Colgan	Bill Bailey
Greg Cendiff	Jean K. Brachman	David Mozes
George Kazan	Arlene D. Bindloss	Ruth Holcomb
Bunni Hurlong	Thomas E. Colgan	Marjorie Roberts
Tim Colgan	Ethel Monfort	Bud Gallagher
Sue Drury	Carl Falco	Lori Hubner
Jimmie McCarty	Larry Walker	Bernie Brachman
Ed Hurlong	Alida Fish	Marion McCullough
Ellen Dolmetsch	A. Barnes King	Paul Thompson
Ronald Enie	Sharon Young	Mary Cirker
Rae Gerstine	Tim Moore	Herbert Saye
Shaul Gladstone	Molca Budin	Russ McKinney
Lanier Colgan	John Gray	Elizabeth Varley Walker
Phyllis Wynn (NV)	Virginia Shaw	Alan Burslem
Jerry Smith	Temma Tanzer	Bea Phillips
Carolyn Liberman	Sarah Hamburger	Frank Gray
Edward Rohrbach	Bill Press	Yvonne King
Eugene Shaw	Steve Tanzer	Mary Brent Whipple
Joan W. Colgan	Victoria McCarthy	William Weible
Patricia Press	Tim McCarthy	Debbie Theis
Betty Knott	Frank Young	Harvey Neal
Joseph Gangemi	Helen Vinson	Sarah Moore
Sally Thurston	John Austin	Sandi Hurlong

The meeting was convened at 7:33 PM

Purpose: Motion of Town Assembly, June 23, 1986. Moved that a special Town Assembly be called on the third Monday in October to discuss the tax revision proposal.

Communications: Letter from Carl VonDreele who was unable to attend due to poor health.

A basic point that needs to be reviewed is whether Arden is really a single-tax community. Some will say it is because it levies a single tax (i.e., land rent) based on the value of the land under lease. They will further contend that the "fruits of man's labor" (i.e., buildings and other improvements) are not taxed - only the land. The mildest statement I can make in response is that such thinking is very superficial.

The fact of the situation is that the land rent is, in effect, two taxes - one for general community purposes, including county and school property taxes on the land - the other is for county and school property taxes on the buildings and other improvements. This is evident since the land rents are established with the objective of securing sufficient funds to cover both purposes.

Furthermore, the property taxes on buildings and other improvements, billed to the leaseholders, are actually paid from land rental funds. The rationale for such payments is the requirement in the Deed of Trust and the leases that "all State and local taxes" be paid from land rents. This phrase, originally written in the early 1900's, is obviously out-of-date and needs to be interpreted in the light of today's situation. Evidently, some time before I came to Arden 37 years ago, this was interpreted to apply only to local real estate taxes. In those days the taxes were not significant, but they certainly are significant now. It is time for another look.

It seems to me that, to avoid any appearance of taxing the "fruits of man's labor", the phrase "all State and local taxes" should be interpreted to apply only to property taxes on the land. The land rent then becomes a true single-tax to meet the needs for general community purposes, including payment of the land taxes. Leaseholders would pay directly the taxes on their own buildings and other improvements - the same as other personal taxes.

This proposal would resolve the complaints that some leaseholders have a considerable part of the property taxes on their buildings and other improvements paid by other leaseholders. This has been termed "re-allocation", which doesn't justify the inequities.

Also, there would no longer be any question as to the legality of tax rebate to low-income senior citizens who have been granted partial exemption by the County. In these cases the tax saving would be realized through direct payment of the reduced taxes.

Another troublesome problem would be eliminated - possible rebate to the Arden Club which has obtained a full exemption on its buildings and improvements. Land rent under the proposal would not contain any element, directly or indirectly, of tax on buildings and other improvements, so there would be nothing to rebate to the Club.

In conclusion, it seems to me that the simplest proceeding is to convince the Trustees to acquiesce in the suggested interpretation of "all State and local taxes" to apply only to local taxes on the land (there are no such State taxes). Affirmation vote of the special Town Assembly meeting would help, but there would be no need for referendum or court action. Decision is needed by the end of the year so that the new Board of Assessors has the proper guidance in establishing land rentals for the year 1988-9. Change in payment of property taxes could not ordinarily be made before the County's year 1988-9. An earlier change would require proportionate refunds to leaseholders or credits to their land rent accounts.

Report on Adopting a land-only tax for assessing and collecting land rent. Temma Tanzer & Ruth Holcomb

This plan would:

- Eliminate the consideration of improvements in assessing and collecting land rent
- Eliminate all over and under payment on personal taxes
- Ensure that all leaseholders are contributing their fair share towards the running of the town and that no leaseholder would have an advantage over any other leaseholder
- Eliminate double taxation (many mortgage companies are collecting both land rent and County taxes as part of the mortgage payment)
- Allow those qualified over the age of sixty-five to receive a tax exemption directly from the County and school district
- Allow the Arden Club to benefit from their tax-free status with

the County
 Enable homeowners to appeal their own County assessments where indicated
 Eliminate doubt over who is responsible for transfer taxes
 Allow for a considerably smaller prudent reserve

The basic proposal:

All homeowners would pay directly to the County their personal taxes on leasehold improvements (homes, garages, swimming pools, tennis courts, storage sheds, etc.) and no longer pay land rent on these improvements
 Land rent would be used only for town expenses including land taxes, community services, and maintaining a prudent reserve

This is how one proposal based on the land-only tax would have worked for 1987-88:

The factor on commercial use would be continued
 All other factors including the domicile rule would be discontinued

The "A" rate for 6,500 square feet would include \$200 per leasehold to cover garbage collection

The "B" rate would be applied to square footage in excess of 6,500

These rates would have been:

"A" rate - \$49.58 (the rate obtained by using \$18.81 per thousand square feet plus \$200 for garbage collection)

"B" rate - \$18.81

This would have produced \$109,788.20

The Assessors report called for raising approximately \$220,000. We have deducted for the following:

\$93,000 for improvement taxes

\$10,000 for Montessori donation

\$ 8,000 for prudent reserve (a very conservative reduction)

Examples of land rent:

10,000 square ft. leasehold - \$388.10

20,000 square Ft. leasehold - \$576.20

30,000 square ft. leasehold - \$764.30

40,000 square ft. leasehold - \$952.40

Under this plan 134 out of 197 leaseholds would have paid less money for the combined land rent and County/school taxes than they will actually pay for land rent alone.

Motion presented by John Dossett. I move that this meeting of the Town Assembly of Arden approve the proposed reinterpretation of the phrase "State and local taxes", contained in the Deed of Trust and the leases, so that the phrase applies only to local taxes on the land, thereby excluding taxes on the buildings and other improvements belonging to the leaseholders. The Trustees are requested to abide by this reinterpretation, effective with the property taxes to be paid in 1988. The 1987 Board of Assessors is requested to make an appropriate reduction in the amount of funds estimated to be needed from land rents for the fiscal year beginning March 25, 1988. The Trustees are responsible for timely notification to all leaseholders and New Castle County and for seeing that the County records correctly identify the leaseholders.

Trustees' Position Paper

I. **GENERAL:** The issues raised, and the general welfare of the village, are ill-served by vague references to an atmosphere of unrest and rising hostility, or of the destruction of all we have worked to create in Arden over the years. They are also ill-served by charges of "disinformation" when objections are raised. The suggestion that certain unnamed attorneys have darkly hinted at law suits can only generate a level of hysteria which will be counter-productive. We do not believe anyone is interested in subjecting the Village to the tremendous expense and agony of law suits, except perhaps those attorneys who might profit from same. With the above in mind, we would like to discuss the substance of Mrs. Tanzer's proposal point by point.

II. **PAYMENT OF TAXES BY THE TRUSTEES:** The Trustees are bound in their administrative actions by the Deed of Trust, by certain ancillary documents such as a group of court decisions, by derivative documents such as the leases supplied to all leaseholders, and by over 80 years of precedent which is weighed very heavily by the courts.

The Deed of Trust specifically directs the Trustees to first pay all State and Local taxes from funds collected. The leases, which are derivative of the Deed of Trust, and which are expressed contracts, bind the Trustees and leaseholders to certain courses of action. One of these is that the Trustees agree to pay taxes as specified in the Deed of Trust. Court decisions have taken cognizance of these documents, and of the long precedent involved, and have upheld the current procedure. They have generally concluded that the recurring real estate taxes are those that were within the purview of the Deed of Trust as written in 1908.

The Courts were aware that some leaseholders would pay less to Arden in Land Rent than Arden would pay to New Castle County in taxes, and that the converse was true. They concluded, however, that Arden is a Single Tax community based on the principles of Henry George, and that the above scenario was consistent with those principles. The basic principle is that Land Rent should be assessed based on the amount of land monopolized by a leaseholder, and that said leaseholder should not be penalized by being taxed on "the fruits of his or her labor". The fact that those outside the enclave chose to view things otherwise had no bearing on the mandate dictated by the Deed of Trust.

It may therefore be said that if the Trustees agreed to the suggested change they would be:

- A. Violating the Deed of Trust.
- B. Violating every single lease agreement.
- C. Violating the principle that no individual should be penalized for making improvements to a leasehold.

The surest way to end up in court would be to accept Mrs. Tanzer's proposal, since it would take only one leaseholder holding an expressed contract in the form of a lease to bring action. The position of the Trustees is that they would much rather defend their actions in court by meeting their obligations under the leases, the Deed, court decisions, and precedent than by violating those obligations.

III. **SECURITY OF OWNERSHIP:** Lack of security of ownership is a myth for the following reasons:

- A. State Law, Title 25, Section 2501, entitled "Mortgaging of Leasehold Interest", specifically states that leases in excess of 10 years are considered to be equivalent to land owned outright in fee simple.
- B. The leases are not implied contracts at all, but are expressed contracts, and are so viewed by the courts. Far from allowing the Trustees to take it upon themselves to pay the taxes, the leases expressly direct that they do so.
- C. As an addendum to "B", Mrs. Tanzer has stated on other occasions before this Assembly that there are no such things as unwritten agreements in the real estate field, and that there cannot be any implied contracts.

IV. ADMINISTRATIVE MATTERS: These are not necessarily unique to Arden, and there is no reason why they cannot be corrected. They are:

- A. Erroneous billing by the County. The County experiences difficulty in pulling together all the necessary paperwork to enable the Billing Division to keep all their names up to date. In addition, attorneys, real estate agents, and mortgage companies do not always supply sufficient paperwork or information to the County in a timely fashion. This in no way affects the integrity of ownership as long as the leaseholder has a valid lease, presumably with a copy in his or her lawyer's office, and Arden's own records are current. The latter is so, in fact, and errors in Arden's bills to leaseholders have been rare indeed. Nonetheless, we are making a concerted effort to have the County update and correct all their records. We apologize for the problem, but have no indication that anyone has ever been hurt by it.
- B. Double Taxation. This is a potential problem, but has nothing whatever to do with the Arden system. It occurs much more often outside Arden wherever taxes are escrowed. Many taxpayers have found that they have paid taxes and their mortgage companies have duplicated the payment, charging the taxpayer in the monthly payment. This is the result of sloppy work by the lawyers, real estate agents, and banks involved. If a lawyer simply reads the lease, the problem would not exist. Mr. Monfert has suggested an educational effort to acquaint local practitioners in real estate transfer of our concern in this matter, and the Trustees are considering what course of action to take.
- C. Miscellaneous Taxes. Transfer taxes, sales taxes, and inheritance taxes are specific examples of transaction taxes which did not exist in 1908, and therefore are considered to be outside the purview of the Deed of Trust as described in Section II, above. The Trustees have no intention of paying them. Income and capital gains taxes are special examples of the above.
- D. Accommodations. Mrs. Tanzer makes the somewhat enigmatic statement that "Arden has satisfied particular people by making accommodations which may or may not have been legal". We know of no such accommodations made by the Trustees, and therefore have no response.

V. LAND RENT REBATES: The Trustees are primarily an adminis-

trative Board, and have very little discretionary power. What little we have has been exercised in the case of rebates in the following way:

- A. Senior Citizens. By Court decision, the Arden Trust is considered to be a "charitable trust" as defined under Delaware Law. New Castle County allows certain senior citizens who qualify by reason of age and very low income to apply for up to a \$30,000 exclusion on the assessed value of their property, and reduces taxes to Arden accordingly. In keeping with the charitable trust concept, the Trustees collect the assessed full rental value from three individuals currently qualifying, and then rebate the reduction to them. The total was \$821.37, and this practice shall continue.
- B. Non-Profit Organizations. The Arden Club has received the proper IRS designation and as a result no taxes are assessed by New Castle County on its buildings. The Trustees collect the assessed full rental value from the Club, but have no basis for giving them a rebate. It has been suggested to the Club that they approach the Assessors with their problem. In the past, the Assessors have attached factors to various properties ranging from +75% for commercial lots to -10% for inaccessible ones. If the Assessors judge that a non-profit organization deserves a negative factor, we will bill the Club accordingly.

We know, of course, that churches and other non-profit organizations frequently command large sums of money, so movement along the above lines should be carefully considered. We don't know what other non-profit organizations may surface in the future. The justification could be that the Club performs a public service, although it would have a stronger case if it didn't charge the Town Assembly rent.

- VI. ASSESSORS PROCEDURES: The Assessors take an oath to assess the full rental value of Arden land. Over the years, they have used many different approaches to arrive at what seems like a simple enough concept. For instance, if comparables show that Arden land is worth \$40,000 an acre, and if 10% is a proper rental for an improved piece of land, then \$91.83 would be the rental for 1,000 square feet. This simple concept, which was used for many years, has been changed by assigning ever greater value to small lots and ever less comparatively to large lots without any data or professional testimony. With the proper back-up data, the method would still appear valid under land valuation taxation methods. Recent boards have taken a different approach, never failing, however, to increasingly penalize the small leaseholder, as is dreadfully apparent in this year's Assessment.

The Trustees must assume that the Assessors have been true to their oath, and therefore the Trust collects the rent as directed by the Assessors and apportions it as directed by the Town Assembly after paying County taxes. If the Assessors suddenly told us to pay our

improvements tax to the County, and then reduced the full rental value to about 50% of what it had previously been, they would be hard pressed to explain their action. How can anyone swear that full rental value one year is \$90/1,000 square feet and \$45 the next? The institution of such a drastic change would undoubtedly bring us into court. There is even the possibility that we would end up paying both the improvements tax and the \$90 ground rent.

Despite Mrs. Tanzer's allegations, no one is "forcing" the Assessors to consider improvements on the land. They have taken a very wide latitude over the years, and can arrive at full rental value in many different ways. What they cannot do, however, is unilaterally abrogate the Deed of Trust, all the Arden leases, all the court decisions, and 86 years of precedent. Perhaps a return to the basic concept of actual land value, and a rental factor for same, is in order.

Temma pointed out that by "implied contracts" she was referring specifically to real estate sales contracts. Shaul rebutted that he was responding to discussions in previous meetings.

Temma Tanzer introduced her legal advisor, Tim Rafferty. Mr. Rafferty explained that he was neither for nor against Henry George. Nothing in the Deed of Trust requires that the Trustees pay improvement taxes. The Tanzer/Holcomb proposition does not violate the Deed of Trust.

Question to Mr. Rafferty: have you read the decisions from the Court of Chancery? Answer: no. Any expert witness who has not thoroughly researched the subject is not qualified to give an opinion. The present method has not been successfully challenged in 86 years, the suggested change may bring about a serious law suit.

Discussion

PRO:

We have been pretending to be a single tax community. The Deed of Trust only talks about taxes on land. Arden's special character is not based on its method of tax collection. We are not an egalitarian society as envisioned by Henry George. Aren't rebates to senior citizens a contradiction?

We do not want to rip the fabric of the community or change the Deed of Trust. The Trust only refers to the land.

Many things have changed in the outside world in the last 86 years. County and State taxes, once negligible, are now a major factor. Arden has adjusted its taxation system in an effort to keep up: the two-tiered system, the domicile factor, tax rebates. The single tax system is being bastardized. 40-50% of our tax rate is based on improvements. Arden should not tax its own residents on the fruits of their labor.

It is a poor excuse for maintaining a mistake to say it has been here for a long time. Arden's founders could not foresee today's situation. My neighbor's improvements on his property do not help me.

This town is based on land only taxation. We should have nothing to do with improvements taxes. The Trustees should have brought their own attorney to the meeting to address legal issues.

CON:

Mrs. Tanzer's proposition is out-of-order. The Trustees are mandated to collect the full rental value. No one should be taxed on the fruit of his labors.

The Deed of Trust and ancillary documents can be changed if the majority of residents and the Trustees agree on this move. It would have to be done legally, a complex and expensive proposition.

Arden was formed to be a laboratory for Henry George's philosophy that one shall not be taxed on one's labor.

We must not destroy the fabric of our village. Land rent is not what is left over from the evaluation of the houses.

We should devote our energies toward arguing with the County, especially in changing the zoning so that Arden could have more domiciles and more people could live here.

Henry George is not an obsolete philosopher. We still value the Old Testament, the Magna Carta and the Constitution. This is our value system.

We talk of people paying too much or too little. How do we define their terms too much or too little?

We should not rely on the County's property assessment system. Some properties are valued at twice the rate of similar ones. We have better control of the situation with land value taxation.

The main area of contention is between large and small leaseholders. This motion makes real reform of Arden's system harder to accomplish.

Arden's system does contain inequities that need to be addressed. First, we need to study the background of the system including court decisions.

It is too bad that the publicly issued spread-sheet of individual land taxes reveals the senior citizen tax exemptions. The Trustees have always regarded this as private information.

This community was formed as an experiment in land value taxation. We all signed leases which stated this principle, thus agreeing that property improvements should not be taxed.

The Trustees have stated they will not accept this change. If we accept this proposal we will tie up the town in a costly legal battle.

Motion defeated: 21 Aye, 57 Nay.

Bill Press announced that the Arden Club Board has voted to pay the Club's land rent in the spirit of cooperation.

Letter from Harold Monfort. (This letter did not arrive in time for the reading of correspondence.)

It is my feeling that this proposal would so seriously damage the intent of the Arden Trust that it must not be accepted without a court order.

If the Trustees feel the same way, I think the populace should be so informed. If the Trustees should elect to comply with such a proposal, they will likely find themselves sued for violation of their trust responsibility.

This matter is far beyond the powers of the Board of Assessors and I think it would be appropriate to advise the Assessors to refuse to debate the issue in their meetings.

I urge that the Assessors be advised that this way of "spending" Arden money lies outside their jurisdiction. It is my belief that it amounts to a "spending" problem and therefore lies within the Budget Committee-Referendum provisions of the Town Charter.

This refers to the current question related to the Arden Club as well as the longer standing old-age "rebate".

Chairman Press said he was pleased to see the renewed interest in the town assessment procedure. There will be a meet-the-candidate forum for the nominated assessors tomorrow night.

Shaul Gladstone moved that this Town Assembly direct the Trustees to investigate the interpretation of the method by which we collect land rent in conjunction with the Center for Public Dialogue.

The CPD is an organization involved with land value taxation in a practical and theoretical way, studying how it relates to the present world. The organization is interested in studying how Arden got where it is and how the present situation could be improved. CPD is located outside Washington, D.C.

Mike Curtis added that CPD is funded by the publisher of Henry George books. The Director, Walter Rybeck, attended Henry George Day in Arden and offered to do a sociological study of Arden's influence on the community and vice-versa. Arden is a significant experiment in land value taxation.

Discussion:

How much will this investigation cost? Nothing.

Shouldn't someone from the County be involved in the study? Shaul reminded the Assembly that he is a County employee. He could get input from the County Finance Department.

Shouldn't the study include residents who are not single-taxers? Mr. Rybeck would like to involve the entire community and hear all dissatisfactions. This motion is to get the project launched.

Shouldn't the newly elected assessors be included on the committee? That would create too large a committee for this initial step which is to meet with Mr. Rybeck and describe the historical background and current system. Then the CPD will meet with Assessors and townsfolk.

Amendment: There will be a report to the community at the next Town Meeting.

Motion passed.

Meeting adjourned - 9:43 PM.

Sarah S. Hamburger
Secretary